

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

| | | |
|----------------------------------|---|--------------------|
| PERREN LAMONTE LANE, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | 1:10CV208 |
| |) | 1:07CR427-1 |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Respondent. |) | |

**ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Petitioner, a federal prisoner, has submitted a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. This motion cannot be further processed for the following reason:

1. Motion is not on proper § 2255 form.

Because of this pleading failure, this particular motion will be dismissed, but without prejudice to Petitioner filing a new motion properly following the 28 U.S.C. § 2255 forms, correcting the defect of the present motion. The Court has no authority to toll the statute of limitations, therefore it continues to run, and Petitioner must act quickly if he intends to pursue this motion. *See Spencer v. Sutton*, 239 F.3d 626 (4th Cir. 2001). To further aid Petitioner, the Clerk is instructed to send Petitioner new § 2255 forms and instructions for filing a § 2255 motion, which Petitioner should follow.

IT IS THEREFORE ORDERED that the Clerk is instructed to send Petitioner § 2255 forms and instructions.

IT IS THEREFORE RECOMMENDED that this action be filed and dismissed *sua sponte* without prejudice to Petitioner filing a corrected motion on the proper § 2255 forms.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: March 26, 2010